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Author(s): Norman Daniels

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Equality of What: Welfare, Resources, or Capabilities?¹

NORMAN DANIELS
Tufts University

1. THE TARGET OF EGALITARIAN CONCERNS

Many of us have egalitarian concerns. To some extent, that is, at some cost, we prefer a world in which goods — powers, liberties, opportunities, wealth, health — are more equally distributed to one in which they are not. At least to some extent, we are willing to forego delivering a greater benefit to someone who is already better off in order to deliver a lesser benefit to someone who is worse off. Whether we are strictly concerned with equality or merely with giving priority to the claims of those who are worse off, we face the question, What is the ultimate target of our egalitarian concerns?²

Three apparently distinct targets have been proposed as answers to this question. First, when we urge specific egalitarian reforms, we are really trying to make people equally happy or *satisfied*, or at least to guarantee them *equal opportunity for such welfare*. This is the claim made by Richard Arneson and (with qualifications) by G. A. Cohen.³ Rejecting welfare-based targets, others say the target of our egalitarian concerns is assuring people greater equality in the *resources* needed to pursue their ends. Ronald Dworkin argues in this vein,⁴ and John Rawls' Difference

¹ I have benefited greatly from discussions with Joshua Cohen and John Rawls in preparing this paper.

² Derek Parfit has argued persuasively (unpublished ms.) that a concern for equality and a concern for giving priority to the worst off are not the same. For my purposes here I count them both as egalitarian concerns, since the distinction is not important to the debate about their target.

³ Cohen is interested in "advantage," a broader notion than mere welfare, but advantage includes welfare. Cf. G. A. Cohen, "On the Currency of Egalitarian Justice," *Ethics* 99 (July 1989): 906-44; Richard J. Arneson, "Equality and Equal Opportunity for Welfare," *Philosophical Studies* 54 (1988): 79-95.

⁴ Ronald Dworkin, "What is Equality? Part 1: Equality of Welfare," *Philosophy and Public Affairs* 10 (Summer 1981): 185-246; "What is Equality? Part 2: Equality of Resources," *Philosophy and Public Affairs* 10 (Fall 1981): 283-345.

Principle gives priority to those who are worse off according to an index of primary social goods.⁵ A third view is that the target of our egalitarian concerns is the positive freedom or *capability* of people to do or be what they choose. Amartya Sen rejects both welfare and resource based accounts in favor of this target.⁶

In what follows, I will not attempt to resolve this dispute about the ultimate target of our egalitarian concerns. For one thing, I am not sure that the task of a theory of justice involves answering this question about the ultimate target of our egalitarian concerns in the way in which it is posed here. Our egalitarian concerns might, for example, have different targets in different contexts. Though Arneson, Cohen, Dworkin, and Sen seem committed to some version of the encompassing question about targets, it is not clear to me that Rawls is, even though his arguments for primary goods and against welfare-based claims about well-being began the dispute. Rawls may not believe there is a unified target of egalitarian concerns because our interests in equality or equal treatment may differ for purposes of political philosophy and in other moral contexts, e.g., in a family or other private association (see Section 4 below). Nevertheless, I want to explore some issues raised by the dispute, and I want to do so by examining some recent criticisms of a central feature of Rawls' theory of justice as fairness, namely, his claim that an index of primary social goods is the appropriate measure of relative well-being for purposes of political philosophy. This approach fits well with the history of the debate about targets, for it was Rawls' criticisms of welfare-based measures of well-being and introduction of the primary social goods that began the dispute.

I am interested in criticisms of the primary goods (and Rawls' use of them) that come from two different directions, in the sense that they are defenses of distinct targets. Each says that the primary goods are inflexible or insensitive to some kind of variability in people. This variability keeps people from converting primary goods with equal efficiency into what is of ultimate moral concern. As a result, the primary goods inadequately

⁵ John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971); "Social Unity and the Primary Goods," in Amartya Sen and Bernard Williams, eds., *Utilitarianism and Beyond* (Cambridge: Cambridge University Press, 1982), pp. 159-86; "The Priority of Right and Ideas of the Good," *Philosophy and Public Affairs* 17 (Fall 1988): 251-76.

⁶ Amartya Sen, "Equality of What?" in S. McMurrin, ed., *Tanner Lectures on Human Values*, Vol. 1 (Cambridge: Cambridge University Press, 1980), reprinted in Sen, *Choice, Welfare, and Measurement* (Cambridge: MIT Press, 1982), pp. 353-69; "Well-being, Agency and Freedom: The Dewey Lectures 1984," *Journal of Philosophy* 82 (April 1985): 169-220; *Commodities and Capabilities* (Amsterdam: North-Holland, 1985); "Justice: Means Versus Freedoms," *Philosophy and Public Affairs* 19 (Spring 1990): 111-21.

capture the force of our egalitarian concerns, leading us to treat people similarly when a relevant inequality still exists among them.

One line of criticism of the primary social goods is that they fail to capture a fundamental moral intuition that underlies our concerns about equality (that is, about permissible inequalities). The intuition is that whenever we are made worse off through no fault of our own, or as the result of nothing that we could control, then we have a legitimate initial claim on others for assistance or compensation for our misfortune. Rawls' use of primary goods keeps us from responding to certain ways in which individuals with the same primary goods may be made worse off with regard to their opportunity for welfare through no fault of their own, and so his principles of justice will not be responsive to this central egalitarian intuition. Arneson and Cohen, in developing this line of criticism, further argue that the underlying intuition is one that Rawls himself appeals to elsewhere in his theory.⁷

The other line of criticism is that individuals vary in their ability to convert primary goods into what is really important to them, namely, the freedom or capability to do or to be (to function as) what they choose. This variability in the ability of people to convert primary goods into capabilities suggests that the primary goods are "inflexible" and ultimately miss what is of fundamental moral concern, namely, greater equality of capabilities. Sen, who develops this line of criticism, suggests there is an element of "fetishism" in Rawls' use of primary goods.⁸ What is of ultimate concern here is not the primary goods, but capabilities, which are the result of a "*relationship* between persons and goods."⁹ Though welfare-based accounts are mistaken about what is of ultimate concern (Sen agrees with Rawls in rejecting them), at least they, like Sen's capabilities, avoid fetishism.

I shall argue that neither of these lines of criticism shows us that a theory of justice using primary social goods misses the target of our egalitarian concerns, at least for purposes of the just design of basic social institutions. To be sure, judging the well-being of representative individuals by reference to an index of primary goods is a very *abstract* measure of well-being. Rawls intends it only to capture the well-being of people insofar as they are thought of as citizens who share an interest in cooperation for mutual advantage in a well-ordered, pluralist society, who function normally over a complete life, and who are "free" and "equal." They are free

⁷ Cf. Arneson, "Primary Goods Reconsidered" (unpublished ms., 1988, forthcoming *Nous*).

⁸ Sen, "Equality of What?" p. 363.

⁹ Sen, "Equality of What?" p. 366.

and equal in the specific sense that they have two basic moral powers, the power to form and revise a conception of the good and the capacity for a sense of justice.¹⁰ The primary goods thus meet the needs and interests of citizens, conceived in this abstract and idealized way. Nevertheless, this does not make them “fetishist” and “inflexible,” as Sen argues, and I suggest in the next section how we can appropriately flesh out the primary goods so that the principles of justice avoid these criticisms. In the third section, I argue that accounts that focus on “equal opportunity for welfare (or advantage)” run afoul of Rawls’ insistence that individual conceptions of the good are incommensurable, that is, with the fact of pluralism. I also respond to Arneson’s and Cohen’s arguments that the primary goods are inflexible because they force us to ignore the legitimate complaints of people who are worse off than others because some of their preferences or values, which they have through no fault of their own, put them at a disadvantage.

Though I believe I can defend the primary goods against these criticisms about inflexibility, a deeper issue about justification remains. These criticisms arise from a basic disagreement between Rawls and his critics about the domain of justice and the relevance of comprehensive moral views to the construction of a *political* conception of justice, one that is not a compromise with what justice ideally requires. I comment briefly on this issue in the last section.

2. CAPABILITIES AND THE INFLEXIBILITY OF PRIMARY GOODS

Sen’s central objection to the primary goods builds on a criticism originally made by Arrow, who noted that people who were ill or disabled might be worse off than others despite enjoying the same index of primary social goods.¹¹ More generally, people vary in their ability to convert primary goods into well-being. As a result, if we take the primary goods as the appropriate measure of well-being for purposes of justice, we may treat people unfairly. There are really two, related claims here.¹² First, the variability among persons implies that the primary goods are an *inflexible* measure of well-being, ignoring variations that matter. Second,

¹⁰ The derivation of a workable list of the primary goods from these basic *political* notions lying at the heart of liberalism represents a shift from their derivation in *A Theory of Justice*. Cf. Rawls, “Social Unity,” p. 165 n. 5 and “The Priority of Right,” p. 259 n. 10.

¹¹ Kenneth Arrow, “Some Ordinalist-Utilitarian Notes on Rawls’s Theory of Justice,” *Journal of Philosophy* 70 (1973): 253f.

¹² Rawls divides the argument in a similar way, and there is considerable agreement between his response to it and mine; cf. “Justice as Fairness: A Briefer Restatement” (unpublished ms., 1989), p. 118f.

this inflexibility should count as strong evidence that the primary goods are the wrong quality space in which to work: we are not ultimately concerned with goods — primary or not — but with what people, given their variability, can do and be with those goods (thus Sen's charge of fetishism). I will first respond to the charge about variability and inflexibility; then it may be possible to address the claim that justice is concerned with capabilities.

One source of variability in the conversion of primary goods into well-being is that introduced by the different conceptions of the good, including different preferences and values, held by individuals. How satisfied people are with their lot in life — how much *welfare* they have, as judged by utilitarian and other welfarist theories — will depend not only on the primary goods available to them, but on their preferences.¹³ Some people will be inefficient converters of primary goods into welfare because their conceptions of the good make them hard to satisfy. For example, if someone has expensive tastes, e.g., for expensive wines, and is unhappy because she cannot be satisfied on her share of primary goods, then our egalitarian concerns do not seem to pull us in the direction of thinking she has a legitimate claim on us because we have not adequately provided for her welfare. Indeed, we resist what seems like “hijacking” by expensive tastes. Sen agrees with Rawls that it is an advantage of the primary goods that they ignore *this* source of variability, because, like Rawls, he rejects welfare as an appropriate measure of well-being or relative advantage for purposes of justice. (I return to these matters in the next section where I discuss the retreat from “equality of welfare” to “equal opportunity for welfare” in the face of these anti-hijacking sentiments.)

What does trouble Sen is the other kind of variability that also bothered Arrow: some individuals are inefficient converters of primary goods into relative advantage or well-being because they are ill or handicapped. Similarly, there may be variability in the nutritional needs of individuals — e.g., between those with low or high metabolic rates, or between pregnant women and others. In contexts of serious poverty, these nutritional differences would lead to significant differences in relative advantage. A theory that judges the well-being of individuals by an index of primary social goods ignores this variability. Sen remarks that the “Charybdis of overrigidity threatens us as much as the Scylla of subjectivist variability, and we must not lose sight of the important personal parameters in developing an approach to well-being.”¹⁴ To some extent, Rawls invites Sen's criticism,

¹³ Cf. Arrow, “Ordinalist-utilitarian Notes,” p. 253f; see Dworkin's excellent discussion of these issues in “Equality of Welfare,” p. 228ff.

¹⁴ Sen, “Well-being, Agency and Freedom,” p. 196.

since he explicitly sets aside and ignores the variability among individuals that is introduced by disease and disability.¹⁵ Rawls' view is that, if we can solve the problem of justice for the idealized case that ignores this variability, then maybe we can extend the solution to more complex cases. I shall suggest shortly that Rawls' best response to Sen lies in such an extension of the basic theory; but I am getting ahead of myself.

Sen's own account of relative advantage or well-being concentrates on the concept of "functioning." How well off we are depends on what we can do and be, that is on how we function. For example, "doings" and "beings" include "activities (like eating or reading or seeing), or states of existence or being, e.g., being well nourished, being free from malaria, not being ashamed by the poverty of one's clothing or shoes."¹⁶ Sen suggests that we represent "the focal features of a person's living" by an n-tuple of different types of functionings; each component of the n-tuple reflects the extent of the achievement of a particular functioning. The n-tuple is thus not just an array of kinds of functionings, but it includes a measure of the level of achievement of each functioning in the array. Sen suggests that a person's *capability* can be represented by the set of n-tuples of functionings from which the person can choose any one n-tuple. In this way, the "capability set" stands "for the actual freedom of choice a person has over alternative lives that he or she can lead."¹⁷

Given the same index of primary goods, a handicapped or ill individual may not enjoy the same capability set or freedom of choice as someone who is normal. I believe the attraction of Sen's criticism comes from this central set of examples. The example of nutritional differences seems problematic only if we assume that an assignment of primary goods will not allow individuals to accommodate, without undue sacrifice, their differences in metabolic needs. In many parts of the world this assumption does fail, because people lose entitlements to food and not simply because of natural shortages of resources, as Sen persuasively argues.¹⁸ Still, I think that an acceptable extension of Rawls' theory to handle the cases of

¹⁵ Rawls says, "It is best to make an initial concession in the case of special health and medical needs. I put this difficult problem aside in this paper and assume that all citizens have physical and psychological capacities within a certain normal range. I do this because the first problem of justice concerns the relations between citizens who are normally active and fully cooperating members of society over a complete life," "Social Unity," p. 168. He appears to endorse my approach to extending his theory to health care needs in "Justice as Fairness: A Briefer Restatement," p. 122ff.

¹⁶ Sen, "Well-being, Agency and Freedom," p. 197.

¹⁷ Sen, "Justice: Means versus Freedoms," pp. 113-14.

¹⁸ Sen, *Poverty and Famines: An Essay on Entitlement and Deprivation* (Oxford: Clarendon Press, 1981).

disease and disability can be further extended to accommodate the problem of nutritional differences, though I will say nothing further about nutrition here.

Before turning to the examples of disease and disability, it is worth noting that Sen says little, at least in the context of this line of criticism of Rawls, about another important kind of individual variability, namely, variability in the natural bases for talents and skills. Someone who is naturally manually dextrous can convert a given level of primary goods into a larger or better capability set than someone who is not (and is in all other ways the same). It is not clear what Sen wants to do about this source of inequality in capability sets or freedoms. It is not obvious that any simple adjustment to resources can eliminate this source of inequality in capabilities. My guess is that Sen would probably try to mitigate the effects of this inequality in some way, acknowledging that he cannot eliminate it. But that is just what Rawls does.

Rawls is, of course, explicitly concerned with this source of variability. The Difference Principle acts to *mitigate* but not to eliminate (which may be impossible) the effects on those with the worst talents and skills by ensuring that inequalities tend to work maximally to their advantage. Rawls' approach is to let the variability that results from the distribution of talents and skills work to everyone's advantage — that is what the “democratic equality” interpretation of the Second Principle involves. The pursuit of fair equality of opportunity does not require leveling all differences in talents or skills, though we are required to mitigate the effects of this inequality. In judging a theory of justice, then, this form of inflexibility of the primary goods does not seem a fatal obstacle. Flexibility can be found elsewhere.¹⁹

Let us return to the central examples of inflexibility, namely, the problems raised by disease and disability. Sen is suggesting that the primary goods leave us incapable of responding to the health care needs of those with disease and disability, especially since Rawls has assumed these conditions away in order to arrive at a core theory for “fully functioning” citizens. I want to show that a plausible extension of Rawls' theory can accommodate, with appropriate flexibility, concerns about disease and disability; I draw on my earlier work on justice and health care needs.²⁰

¹⁹ Sen may believe that producing flexibility in these ways means the theory is responding in an ad hoc manner to what it should have recognized as fundamental from the beginning, namely, variations in capability. It is far from clear, however, that we do or should respond to all variations in capability in the same way or with the same moral justification. I return to this issue briefly in the last section.

²⁰ Daniels, “Health Care Needs and Distributive Justice,” *Philosophy and Public Affairs* 10 (1981): 146-79; *Just Health Care* (Cambridge: Cambridge University Press, 1985);

I begin with a narrow, if not uncontroversial, “biomedical” model: the basic idea is that health is the absence of disease, and diseases (I include deformities and disabilities that result from trauma) are *deviations from the normal functional organization of a typical member of a species*.²¹ The task of characterizing this natural functional organization falls to the biomedical sciences. The concept of disease that results is not merely a statistical notion; rather, it draws on a theoretical account of the design of the organism. In the case of people, we require an account of the species-typical functional organization that permits us to pursue biological goals as *social* animals: our various cognitive and emotional functions must be included. Similarly, we must include mental disease and health into the picture, even though we have a less well-developed theory of species-typical mental functions. This biomedical model has controversial features that I ignore here.²² By appealing to it, however, I can draw a fairly sharp line between uses of health-care services to prevent and treat diseases — that is, uses that keep people functioning normally — and uses that meet other individual or social goals. Though I use a rather narrow model of disease and health, at least by comparison to some fashionable views, health-care needs emerge as a broad and diverse set. Health care needs will be those things we need in order to maintain, restore, or provide functional equivalents (where possible) to normal species function. They include (1) adequate nutrition and shelter; (2) sanitary, safe, unpolluted living and working conditions; (3) exercise, rest, and some other features of life-style; (4) preventive, curative, and rehabilitative personal medical services; and (5) non-medical personal and social support services. The task of extending Rawls’ theory seems difficult in part because it is hard to see how to fit provision of these diverse and extensive needs within the “inflexible” framework of the principles and the primary goods.

I want to emphasize a relationship between normal functioning and opportunity, one of the primary social goods. Impairments of normal species functioning reduce the range of opportunity open to the individual in which he may construct his ‘plan of life’ or conception of the good. Life plans for which we are otherwise suited are rendered unreasonable by impairments of normal functioning. Consequently, if persons have a fundamental interest in preserving the opportunity to revise their conceptions of the good through time, then they will have a pressing interest in main-

and *Am I My Parents’ Keeper? An Essay On Justice Between the Young and the Old* (New York: Oxford University Press, 1988).

²¹ My account draws on work by Christopher Boorse; cf. Christopher Boorse, “On the Distinction Between Disease and Illness,” *Philosophy and Public Affairs* 5 (1976): 49-68, and “Health as a Theoretical Concept,” *Philosophy of Science* 44 (December 1977): 542-73.

²² See Daniels, *Just Health Care*, pp. 29ff for further discussion.

taining normal species functioning by establishing institutions, such as health-care systems, which do just that.

This point can be made more precise. The *normal opportunity range* for a given society is the array of life plans reasonable persons in it are likely to construct for themselves. The normal range is thus dependent on key features of the society — its stage of historical development, its level of material wealth and technological development, and even important cultural facts about it. This is one way in which the notion of normal opportunity range is socially relative. Facts about social organization, including the conception of justice regulating its basic institutions, will also determine how that total normal range is distributed in the population. Nevertheless, normal species-functioning provides us with one clear parameter affecting the share of the normal range open to a given individual. It is this parameter which the distribution of health care affects.

The share of the normal range open to an individual is also *determined in a fundamental way by his talents and skills*. Fair equality of opportunity does not require that opportunity be equal for all persons. It requires only that it be equal for persons with similar skills and talents. Thus individual shares of the normal range will not in general be equal, even when they are fair to individuals. As I noted earlier, within justice as fairness, unequal chances of success which derive from unequal talents may be compensated for in other ways, by the constraints on inequality imposed by the Difference Principle. What is important here, however, is that impairment of normal functioning through disease and disability restricts an individual's opportunity relative to that portion of the normal range his skills and talents would have made available to him were he healthy.²³ If an individual's fair share of the normal range is the array of life plans he may reasonably choose, given his talents and skills, then disease and disability shrinks his share from what is fair. Thus restoring normal functioning through health care has a particular and limited effect on an individual's share of the normal range. It lets him enjoy that portion of the range to which his full array of talents and skills would give him access, assuming that these too are not impaired by special social disadvantages (e.g. racism or sexism).

Two points about the normal opportunity range should be emphasized. First, some diseases constitute more serious curtailments of opportunity than others relative to a given range, and the normal range is defined in a socially relative way. Thus the social importance of a particu-

²³ This is a hefty counterfactual, but I think of it by analogy to what fair equality of opportunity requires in the case of compensatory efforts for those whose talents and skills are misdeveloped, putting them at competitive disadvantage, because of racism or sexism.

lar disease is a notion that is itself socially relative. Second, the normal range abstracts from important individual differences in what I will call *effective opportunity*. From the perspective of an individual who has a particular plan of life and who has developed certain skills accordingly, the effective opportunity range will only be a part of her fair share of the normal range. For purposes of justice, we ignore the individual assessments of the importance of a given function that derive from particular conceptions of the good.²⁴

The suggestion that derives from this analysis of the effect of disease and disability on an individual's fair share of the normal opportunity range is that health care systems should be governed by the principle protecting fair equality of opportunity. In fact, as I have argued elsewhere,²⁵ fair equality of opportunity must be protected over the lifespan of each individual. Since the impact of disease or disability on opportunity range may vary at each stage of life, our system must prudently allocate health care resources by protecting an individual's fair share of the normal opportunity range at each stage of life. In this way we arrive at a fair distribution of health care resources between age groups.

It is important to notice that my notion of normal opportunity range is broader than the primary good of opportunity, as Rawls describes it in his discussion of the original position. There opportunity is primarily concerned with access to jobs and careers, which are taken to be the central matters of concern for citizens, construed as free and equal moral agents possessing certain fundamental moral powers. Does this extension of Rawls' theory do violence to the more restrictive notion of primary goods involved in the discussion of the original position?

I think not. As we move from the original position to the constitutional and legislative stages of Rawls' theory, we have available more information about the specific conditions in a particular society, and the primary goods will be fleshed out and extended in various ways. Rawls suggests that this is true for basic rights and liberties.²⁶ Similarly, the primary goods of income and wealth should not be confused simply with personal income and private wealth. Providing certain public goods (clean air and water, which are important health care needs) could be counted as part of each person's income or wealth. The same can be done *ex ante* for the

²⁴ We thus avoid "hijacking" by past preferences which themselves define the effective range. Of course, impact on the effective range may be important in micro-allocation decisions, including decisions by individuals whether they want to receive certain services.

²⁵ Daniels, "Am I My Parents' Keeper?" *Midwest Studies in Philosophy* 7 (1982): 517-40; *Am I My Parents' Keeper?*, Chapters 3-4.

²⁶ Rawls, "Justice as Fairness: A Briefer Restatement," p. 122.

contingent claims each individual can make on necessary medical services, even if *ex post*, the services each person actually gets will depend on the contingencies of disease and disability. But we should not interpret these contingent claims on access to medical services as mere supplements to the income of the least advantaged. Rather, this form of income or wealth (if that is how we, or economists, count it) — the health care system with this design — is necessary if fair equality of opportunity is to be assured and citizens are to be kept normal, fully-functioning members of society.²⁷

There are some important similarities and contrasts between the approach sketched here and Sen's. Sen's capability sets, for example, resemble my notion of an individual's share of the normal opportunity range. Sen was silent on the issue of whether capability sets should be equal despite the distribution of talents and skills, whereas my account explicitly says shares can be fair even if talents and skills make them unequal. (The effect of this inequality is mitigated by the Difference Principle.) My account also focuses attention on departures from *normal functioning* that shrink shares below what is fair.

This is a crucial restriction, and nothing in the structure of Sen's account matches this restriction. The effect is to make us concerned only with certain sources of the inequality of capabilities open to individuals. What is of urgent moral concern to us is not assuring equality of capability in some global way, in all of its dimensions, but the more modest goal of protecting individuals from certain impairments of their capabilities. The reference to a normal range of functioning is crucial and captures what I believe underlies our sense of the urgency of meeting health care needs for disease and disability. We are not, for example, concerned with shortfalls from some notion of optimal or enhanced capabilities: if I cannot run a 3:50 mile, I do not view myself as handicapped in ways that give rise to claims on society for assistance or compensation for my lack of optimal capabilities. Under justice as fairness, the distribution of talents and skills works to everyone's advantage through the mitigating effects of the Difference Principle. We have special claims on others only when our functioning falls short of the normal range (remember, *normal* is not a statistical notion). We respond to inequalities in capability sets in different ways, depending on the source of the inequality. Properly extended, Rawls' theory captures just the structure of our responses in a plausible way. It is

²⁷ Cf. Rawls, "Justice as Fairness: A Briefer Restatement," pp. 122-23; Daniels, *Just Health Care*, Chapter 3.

quite unclear, in contrast, just how Sen wants to work with his notion of capability sets or freedoms.²⁸

Sen wants to use the claim about the inflexibility of the primary goods to show that these goods placed us in the wrong space for purposes of justice. He argues that we should really be concerned with a certain relationship between goods and persons, namely, capabilities, not primary goods alone. It is now possible to respond to this second claim.

In his recent work, Rawls argues that the primary goods are justified because they are what citizens need to exercise their fundamental moral powers as free and equal citizens. These powers include a sense of justice and the capacity to form and revise a conception of the good. This model of moral agents, Rawls argues, is a *political* conception, one central to the liberal democratic tradition. Viewed in this way, the primary goods *are* connected to a space in which we are concerned about *capabilities*: the capabilities of citizens functioning normally over the course of their whole lives.²⁹ Understood in this way, the target of egalitarian concerns is more similar for Sen and Rawls than it appeared from Sen's criticism of Rawls' fetishism.

As we relax the assumption that we are concerned only with normally functioning citizens — as we introduce the variability that troubled Sen — then we must flesh out the details of the primary goods and the application of the principles. Flexibility can be appropriately introduced. Nevertheless, priority is given to keeping the society as close as possible to the goal of having normally functioning citizens: that is where the underlying political conception drives us. Addressing the problem of health care needs through the primary good of opportunity, that is, through the fair equality of opportunity clause of the Second Principle, keeps us focused on the normal range of capabilities.

What is not driving Rawls' view, however, is some underlying, comprehensive moral view: that positive freedom or capability, in all its dimensions, is of concern for purposes of justice. This point is analogous to Rawls' insistence that his concern for basic liberties is not the result of allegiance to some comprehensive moral view about the importance of autonomy or liberty. Basic liberties as well as fair equality of opportunity

²⁸ Sen does offer a detailed discussion to show that we may arrive at a partial ordering of objective evaluations of levels of functioning or well-being or advantage (cf. *Capability and Commodities*, Chapters 5-7.) What he says little about, however, is what steps justice obliges us to take in response to differences in capabilities or advantage. My modest claim above is that a plausible development of Rawls' primary goods, combined with his principles of justice, allows us to respond to capability differences in reasonable and recognizable ways.

²⁹ See Rawls, "Social Unity," pp. 168-69.

derive their moral importance from their relationship to the political ideal of citizens as free and equal moral agents with certain basic powers. The primary goods are not defended on the grounds that they approximate a dimension of basic moral value (like positive freedom or capability). Rather, they are defended because of their connection to the limited political ideal of a free and equal citizen.³⁰ It is especially important for justification here that the *same* underlying political notions, such as that citizens are “free” and “equal,” unify our account of how to distribute both liberties and economic goods.³¹

3. EQUAL OPPORTUNITY FOR WELFARE

I want to turn my attention to the other line of criticism of primary goods. Here too the primary goods are being accused of being insensitive to a type of variability among people, in particular variability among the preferences people have. For example, some people may have more expensive tastes than others and so be less efficient converters of primary goods into satisfaction or welfare. For the same assignment of primary goods, such people will be less well off than people with more modest tastes (or values).

In response to this line of objection to the primary goods, Rawls has suggested that individuals “be held responsible” for their ends, whereas society is responsible for providing the just framework of all-purpose means within which individuals can pursue their conceptions of the good.³² Dworkin argues for a similar point in his discussion of the case of Louis, who has been given resources sufficient to yield him equal enjoyment to others.³³ Louis now imagines cultivating a more expensive set of tastes. Louis should know that if he cultivates these tastes, and then is compensated because his enjoyment drops, his compensation will come at the cost of lower enjoyment for others. Choosing this outcome, Dworkin urges, would be unfair of Louis, and he would not deserve compensation under these conditions. Now Rawls never offers an argument similar to

³⁰ Cf. Rawls, “Priority of Right,” p. 259. I believe Sen misunderstands Rawls’ point here. Sen argues that no appeal to a comprehensive moral ideal is involved in his use of capabilities because individuals who differ in their conceptions of the good might still think one set of capabilities preferable to another (cf. “Means versus Freedoms,” 117–21). But that might be true and Rawls still be correct. Rawls’ point is that there is no general or comprehensive moral interest in positive freedom or capability, from the perspective of this construction in political philosophy; there is only an interest in the capabilities of citizens and what it takes to keep them functioning normally as citizens.

³¹ Cf. Joshua Cohen, “Democratic Equality,” *Ethics* 99 (July 1989): 727–51.

³² Rawls, “Social Unity,” pp. 170ff.

³³ Dworkin, “Equality of Welfare,” pp. 229 ff.

this one; he makes no such appeal to an intuitive notion of fairness or desert. Nor is it clear that when Rawls says we should “hold people responsible” for their tastes, he is assuming that people actually chose to have the preferences they have and that they can always, at least over time and with some cost or effort, revise them.

The line of objection to the primary goods we are now considering, however, does make the issue of choice of preferences or control over preferences central to egalitarian concerns. Arneson and Cohen, as I noted earlier, have both argued for accounts that make choice central and explicit (they “foreground” choice, as Cohen puts it).³⁴ The suggestion that emerges is this: our egalitarian concerns do not require that we be compensated for being worse off than others when it is our chosen preferences (tastes or values) that make us worse off. We are considered to have chosen a value with which we were raised if we would not be willing to renounce it. For example, if I did not choose to be raised in a religion that makes me feel guilty about sex, but I nevertheless would not choose to have been raised in some other way, then I am in effect affirming the values that lead me to feel guilty, and I should not be compensated as a result of egalitarian concerns for my well-being.

Choice here is central. If I am made worse off because gambles I have made have turned out badly, that is, I have had poor *option luck*, then egalitarian concerns are not triggered. If I fare worse than others because of matters outside my control, then I am a victim of poor *brute luck*, and egalitarian concerns are appropriately brought to bear.³⁵ If this claim is right — and I will return to challenge it shortly — then Rawls’ suggestion that we should “hold people responsible for their ends” seems in need of qualification, for now people did not choose, and so should not really be responsible, for all their preferences.³⁶

³⁴ Cohen, “Currency of Egalitarian Justice,” p. 922, 933.

³⁵ The distinction between these kinds of luck is made in Dworkin, “Equality of Resources,” p. 293; cf. Cohen, “Currency of Egalitarian Justice,” p. 908.

³⁶ Arneson suggests we restate Rawls claim so: “To whatever extent it is reasonable to hold individuals personally responsible for their preferences, to that extent adjusting an individual’s distributive shares according to how expensive his preferences are to satisfy is unfair” (“Primary Goods Reconsidered,” p. 10). He then argues that this modified proposal actually conflicts with the operation of the Difference Principle, since some people (e.g., a Bohemian artist who had the talents and education to be a prosperous business man) might end up among the worst-off in lifetime expectations as a result of their own choices. If actual choice is “foregrounded” or made central in the way proposed here, then it may not be fair that the Difference Principle makes the undeserving poor as well off as possible; it should only help those who are poor through no fault of their own. I will later suggest why Rawls should not make actual choice central in this way, which implies that Rawls should not accept Arneson’s modification.

If we think that the moral principle underlying our egalitarian concerns is simply that we have legitimate claims on others whenever we are worse off than them through no fault of our own, then it might be possible to capture that intuition with a version of a welfare-based theory. Arneson argues that this principle is accommodated if we make the target of egalitarian concerns *equal opportunity for welfare*, where *welfare* means only *preference satisfaction*. Equal opportunity for welfare obtains when each person faces “an array of options that is equivalent to every other person’s in terms of the prospects for preference satisfaction it offers.”³⁷ We should picture this in the following way. Imagine that we represent a person’s life as a decision tree in which all possible life histories are represented. Equal opportunity for welfare obtains if the best path on each person’s life-tree *ex ante* has the same expected payoff in preference satisfaction. Branches in the tree represent all possible choices, including choices about which preferences to act on or to develop.³⁸

The fact that equal opportunity for welfare (or Cohen’s “equal access to advantage”) allows us to make explicit the choice of preferences does not mean it is responsive to Rawls’ objections to using satisfaction as a measure of well being for purposes of justice. (This defense of a welfare based account seems more responsive to Dworkin’s arguments, which I am not primarily concerned with here.) Rawls’ objections to such overall measures of satisfaction weigh against its use in equality of opportunity for welfare as well. To decide, for example, that expected preference satisfaction is equal on at least one path on each life-tree, we must make at least ordinal or co-ordinal comparisons. That would commit us to there being some social utility function that would let us compare the level of satisfaction each person enjoys on the relevant path. Such a utility function would commit each of us, Rawls argues, to accepting its rankings of our overall satisfaction relative to every other person. But such a function *constitutes* a “shared highest-order preference function.”³⁹ On the basis of such a function, it would be “rational for them to adjust and revise their final ends and desires, and to modify their traits of character and to reshape their realized abilities, so as to achieve a total personal situation

³⁷ Arneson, “Equal Opportunity for Welfare,” p. 87.

³⁸ Arneson qualifies this by insisting that persons face *effectively* equivalent options, correcting for inequalities in negotiating abilities for which people are not responsible and that do not balance out (“Equal Opportunity for Welfare,” p. 88. I am not sure how he wants to accommodate the preferences one happens to have at the root end of the tree, presumably the age of maturity. But it is not the details of Arneson’s construction that worry me above (though anyone might be worried about the information burden this picture carries with it!).

³⁹ Rawls, “Social Unity,” pp. 176-79.

ranked higher in the ordering” defined by the function. Rawls main argument is that this shared highest-order preference function is “plainly incompatible with the conception of a well-ordered society in justice as fairness,” in which citizen’s conceptions of the good are “not only said to be opposed but to be incommensurable.” We start, in other words, with the fact of pluralism. Conceptions of the good “are incommensurable because their final ends and aspirations are so diverse, their specific content so different, that no common basis for judgment can be found.”⁴⁰ Indeed, Rawls remarks about “holding people responsible for their ends” is raised in the context of defending the primary goods against the charge of inflexibility in the face of varied preferences; it is not itself offered as an argument against a welfare-based account.

I want to pursue a different kind of objection from Rawls’ to the equal opportunity for welfare (or equal access to advantage) account. I do not believe that the account captures our egalitarian concerns; indeed, an account based on primary goods, extended to include appropriate health care, seems perfectly adequate. I will argue that unchosen preferences that make us worse off than others do not (generally) arouse egalitarian concerns unless they can be assimilated to the cases of psychological disability, that is, to a departure from normal functioning. In that case, they will merit some form of treatment, but not necessarily other forms of compensation. This does not seem to be what would be implied by an equal opportunity for welfare account.

Suppose John’s mother raised him on Mrs. Morgan’s Fish Sticks and that as a result he cannot stand the taste of fish.⁴¹ He becomes interested in the quality of his diet and otherwise quite adventuresome in his eating. Nevertheless, he feels deprived that he is denied access to the broad range of food pleasures that would come from eating and enjoying seafood. He feels ill, however, at the very thought of eating fish. We might even suppose this aversion makes him feel he should not pursue a career as a restaurant critic. If his opportunity for welfare falls below that of others because of this aversion, does he have a legitimate egalitarian claim for compensation?

Suppose Jane’s mother raised her to believe that a mother’s duty is to stay home with her children and that no woman should pursue a career during her childrearing years. Jane no longer believes that, has had a good career, and now faces the choice about what to do about childrearing. But she feels so guilty at the thought of pursuing her career that she ends up

⁴⁰ Rawls, “Social Unity,” pp. 179–80.

⁴¹ The example is adapted from Richard Brandt, *A Theory of the Good and the Right* (Oxford: Oxford University Press, 1979), p. 120.

staying home with her children. Not only does this mean she is deeply disappointed about her sacrifice of career, but she resents the burden placed on her by her children (and her mother). Since this is fantasy, let us also suppose her husband would rather she bring home the bacon than cook it, but he cannot change her mind. Should she be compensated because her opportunity for welfare (or advantage) is less than others?

I think we should do something to help John or Jane only if their situations really reflect some underlying departure from normal functioning. Ordinarily, we expect that someone who does not like fish copes with his unwanted preference by pursuing his other tastes. There's enough else that he likes that we expect him to adapt to his preferences, whatever their etiology. If John was a compulsive or phobic personality, and the aversion to fish were symptomatic of a more generalized inability to accommodate to his preferences, or to reform and revise them over time, then I would be inclined to offer him some form of therapy for the underlying disorder. If, however, he then said that he really did not want the therapy, but preferred to "cash it in" for a week skiing in Vail, then I would refuse him the alternative. I am not interested in moving him to the point where his opportunity for welfare is equal to others; I am only interested in making sure that he has the mental capability to form and revise his conception of the good in a normal fashion. Beyond that, I hold him responsible for his preferences.

My response to Jane is similar. If she suffers from a more generalized incapacity to form and revise her ends over time, perhaps as the result of some unresolved problems in her relationship with her mother, then I would want her to have access to the appropriate form of therapy or group support. I would not, however, be willing to substitute other forms of compensation aimed at moving her back to equal opportunity for welfare. What does the work here is the belief that there is some underlying handicapping condition.

In considering similar sorts of cases, Dworkin also suggests that compensation is due only if we have a case of a "handicapping taste," because handicaps count as resource deficiencies on Dworkin's view.⁴² Cohen suggests that the heart of Dworkin's claim is the idea that the individual is "alienated" from the taste, that it is no longer something the individual identifies with.⁴³ By itself, Cohen urges, this is an inadequate account. Some people may deserve compensation even if they are not reflective enough to formulate the idea that they are alienated. In other cases, life-hampering tastes are not ones the individual really wants to renounce.

⁴² Dworkin, "Equality of Resources," p. 302.

⁴³ Cohen, "Currency of Egalitarian Justice," p. 926.

Rather, the individual really just feels unlucky in having such a taste, say because it turns out to be an expensive one. Ultimately, Cohen suggests that identification and disidentification with a taste matter “only if and insofar as they indicate presence and absence of choice.”⁴⁴

I think Cohen misses the mark. It is not actual choice that matters, but the underlying capacity for forming and revising one’s ends that is at issue. If we have independent reasons to believe that a preference, whether chosen or not, whether identified with or not, cannot be eliminated and is handicapping because of a broader, underlying handicapping condition, then we have reasons to make certain resources available as compensation. It is not the unchosen taste, or the fact that the taste is unchosen, that gives rise to the claim on us. Rather, it is the underlying mental or emotional disability, and the taste, chosen or not, is but a symptom.

My unwillingness to consider converting treatment into other forms of compensation confirms this analysis of the basis for the reaction. It also confirms the view that we are not being motivated by an egalitarian ideal of equal opportunity for welfare or advantage. The structure of our egalitarian concerns does not seem to correspond to a concern for equal opportunity for overall satisfaction. Lack of well-being in some categories counts for a lot; it matters what the source of the shortfall from opportunity for welfare is, not just that there is a shortfall.⁴⁵ (A methodological aside: In saying that I (or we) do not respond to cases in ways that the equal opportunity for welfare or advantage views would endorse, I have not thereby shown those views morally unjustifiable; I have only shown that they do not cohere with at least some of my (our) considered judgments about what is morally required. I return in the next section to comment briefly on what kind of evidence we get for or against Rawls’ view from such correspondence (or lack of it) with this broad range of egalitarian concerns, given that Rawls’ is a theory of justice for basic institutions.)

In his discussion of Dworkin’s distinction between preferences and resources, Cohen argues that Dworkin fails to place choice in as central position as it belongs. The cut between considerations that give rise to issues of redistribution is not the cut between preferences and resources, as Dworkin would have it, but between choice and mere luck.⁴⁶ Where we have lost chances to gain welfare or advantage as a result of brute luck, and not through any choices of our own, then we have a claim of justice on others. For example, if someone’s opportunity for welfare is less than oth-

⁴⁴ Cohen, “Currency of Egalitarian Justice,” p. 927.

⁴⁵ See T. M. Scanlon, “Preference and Urgency,” *Journal of Philosophy* 72 (1975): 655-69; also see Daniels, *Just Health Care*, Chapter 2.

⁴⁶ Cf. Cohen, “Currency of Egalitarian Justice,” p. 933.

ers as a result of unchosen and unreaffirmed religious preferences inculcated in childhood, both Arneson and Cohen believe compensation may be owed. John's aversion to fish and Jane's guilt about the conflict of career and children are other examples in which compensation would be owed, according to the equal opportunity for welfare account. This position is clearly different from Rawls' insistence that we "hold people responsible for their ends," whether or not actual choice underlies a particular preference or not. Earlier I defended Rawls' position by offering a different account of how our intuitions work in these cases. Now I want to offer a reason for thinking that Rawls' suggestion has moral justification, beyond merely appealing to this evidence from judgments about examples.

The interest we have in pursuing our conceptions of the good often requires that we be given considerable liberty to raise our children as we see fit. There are clear costs to this fact: many children will be able to establish command over their own plans of life with considerable difficulty and at some cost. But if we think it is a concern of justice to intervene in each person's life to rectify unequal opportunities for welfare or advantage wherever preferences were not actually chosen, then we must think it is really a task of justice to restrict in many quite intrusive and coercive ways the autonomy we grant people to pursue their plans of life, including their autonomy in childrearing. To be sure, we all believe that parents should not abuse their children or deny them certain fundamental kinds of opportunity. But if we think parents have a responsibility to teach their children to be virtuous and to convey to them what they think is valuable, or at least to model those values for their children, then we can expect children to grow up with some unchosen preferences. Holding people responsible for their ends means that we are acting as if they can exercise their underlying moral power to form and revise their conceptions of the good. We want to back away from "holding people responsible" only if we have reason to think the underlying capacity is compromised, not if we think certain actual choices have not been made. To be committed to rectifying all failures to make actual choices would mean we are committed to compromising one of the central contexts in which the underlying moral power or capacity is exercised, namely, in the autonomy we grant people to raise their children as they see fit.⁴⁷

⁴⁷ The point can be put in a different way, one that uses less of Rawls' construction. We might imagine that we have a number of "political values" which have to be balanced in arriving at what justice requires, all things considered. Thus there is some importance to holding people responsible for their ends — we certainly want to avoid the dissembling that not doing so might involve. Similarly, we do not want people to be disadvantaged by things not in their control. At the same time, we find value in autonomy, in people being

From this perspective, it is reasonable not to make actual choice central in the manner proposed by Cohen and Arneson, although we are interested in protecting the underlying capacity for choice, at least against certain departures from normal functioning.⁴⁸ These considerations show that the moral practice I suggested we exhibit in our attitudes toward John and Jane and in some of the other examples in the literature have more to be said for them than that they merely happen to be what we do. "Holding people responsible for their ends" will be what we do if we are to respect the liberties it is appropriate to grant individuals in the pursuit of the plans of life, including child rearing.

4. A CONCLUDING REMARK ON JUSTIFICATION

I have defended Rawls' use of primary goods against two lines of criticism, both of which claim the primary goods are inflexible and ignore relevant differences in well-being. Although the initial statement of justice as fairness involves the idealization that people function normally over the whole course of their lives, the theory can be extended (in the legislative stage) to accommodate the reality of disease and disability. My account of health care needs shows their connection to the primary good of opportunity. This extension of the theory captures much of what motivates Sen's criticism that justice is concerned with the distribution of capabilities and not merely goods.

In response to the other line of criticism, that our egalitarian concerns require that people be aided whenever their unchosen preferences make them worse off in opportunity for satisfaction than others, I claimed that our egalitarian concerns have a different structure. We are concerned about cases like these only when there is an underlying disability or dysfunction that makes us unable to form and revise our plans of life in a normal fashion. Further, we may "hold people responsible" for their ends without being committed to examining which ones were actually chosen; we need only be assured people can function normally for them to be held responsible. In effect, I have argued that an account of justice that appeals to primary goods matches our considered judgments about how to respond to certain sources of variability in well being, at least for purposes

able to pursue a life plan that includes the moral education of their children. When we balance all these values, we might well think that, all things considered, justice does not require us to compensate people for all their unchosen preferences: holding people responsible for their ends may prove more important. Though we have compromised with our egalitarian concern not to want people disadvantaged through no fault of their own, we are not here compromising with what justice requires: it requires the compromise. This point has a bearing on the comments in Section 4 as well.

⁴⁸ Cohen would certainly agree with wanting to protect this underlying capacity, whatever else our disagreement.

of justice. Neither line of criticism thus gives us adequate reason for abandoning a theory of justice that uses primary social goods as its measure of well-being.

I want to conclude with a brief comment on an important epistemological issue related to this defense of primary goods. Consider the question that began this paper, What is the ultimate target of our egalitarian concerns? I said I would not answer it directly, and I have not, despite my defense of primary goods. I have not answered it directly because it presupposes that all of our egalitarian concerns have one target, and I am skeptical that they are all of a kind. I am not sure they are *uniform* in the sense implied by the question. When I am concerned about responding to the needs and preferences of my children, or of my friends, or of my colleagues in the department I chair, it is not clear to me that my egalitarian concerns are all cut from one uniform moral fabric, and the suspicion that it is not grows stronger when I compare my egalitarian concerns in these contexts with my concerns in wider, public arenas. This skepticism about the uniformity of egalitarian concerns, which I believe I share with Rawls, stands in contrast with the perspective that underlies the positions taken by Sen, Arneson, and Cohen (despite their defenses of different targets). They argue as if one target — capabilities, or equal opportunity for welfare or advantage — comprehensively captures our egalitarian concerns.

Whether or not there is such uniformity affects how we should react to the egalitarian concerns evidenced in certain cases. Suppose that we sometimes do take deficits in opportunity for welfare into account when we think about examples of individuals who suffer from unchosen and unwanted preferences. (My argument in Section 3 responded only to certain examples and could not rule out this possibility.) Perhaps we do this with people we know very well, such as friends or family. Maybe we do this when we understand — or perhaps share — in some detail their conception of the good and when we have fairly reliable knowledge of what is responsible for their dissatisfaction in life, and perhaps where we feel some special responsibility to help them because of our special relationship to them. Would such responses show that a theory of justice governing basic social institutions must respond to the same egalitarian concerns and have the same target? Is my concern for the relative well-being of others in these instances of a piece with the concerns I might express about how society as a whole should react to inequalities in relative well being for citizens?

Such examples by themselves do not show that there is an unified target underlying our concerns for the relative well-being of others. Nor would they show that our concerns in the public domain were just “approxima-

tions” to what interested us in private settings, for example, that it was “only” for administrative reasons that we “compromised” our concerns in the public domain. What should be of moral relevance in the public domain may not be what is of relevance in private domains. What we count as just for basic social institutions may not merely be a necessary departure from what egalitarian concerns “in theory” or “ideally” require. It is an unargued for assumption underlying the question, Equality of what? that there is but one target in all contexts, a target revealed by a uniformity in our firm, considered moral judgments about all contexts in which we are concerned about relative well-being.

This point has epistemological or justificatory implications: it is not clear what kinds of counter-examples to count as evidence in the debate about the target of equality. My showing that *for purposes of justice* we are not and should not be concerned about making choice as central as Cohen would have it does not show that it is an inappropriate focus for egalitarian concerns in other contexts. By the same token, positive evidence that in some individualized contexts we are concerned with actual choices and their impact on opportunity for welfare would not show that this is the target for theories of justice for basic social institutions. Only if we already believed in the uniformity of our egalitarian concerns would examples in one context count as counter-examples to claims about the target in another kind of context. Without the belief in uniformity, we may only have evidence about how to divide our egalitarian concerns into different domains with different targets.

Rawls’ claim that principles of justice apply to basic institutions and not to private exchanges opens the door to rejecting the uniformity of egalitarian concerns.⁴⁹ His more recent elaboration of the claim that justice as fairness is a *political conception of justice* brings a different set of arguments to bear on the question of uniformity. It will be helpful to paraphrase Rawls’ view, since it is an explicit attempt to argue against the uniformity thesis.⁵⁰

Any political conception of justice must accept certain “general facts” of political sociology. These include the following: there is a diversity of comprehensive religious, philosophical and moral doctrines (the fact of pluralism); only oppressive use of state power could maintain common affirmation of a comprehensive doctrine; a stable democratic regime requires widespread, free support by a substantial majority; and, the

⁴⁹ Rawls’ replies to Nozick on this issue elaborate the early form of this argument; cf. Rawls, “The Basic Structure as Subject,” *American Philosophical Quarterly* 14 (1977): 159-65; Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974).

⁵⁰ This summary is based on Rawls, “The Domain of the Political and Overlapping Consensus,” *New York University Law Review* 64 (May 1989): 234-35; 240ff.

political culture of stable democracies normally contains fundamental intuitive ideas that can serve as the basis for a political conception of justice. A political conception of justice has three main features. First, although it is a moral conception, it is developed and applied only to a specific subject, the basic institutions of a democratic regime. Second, people accept the political conception on the basis of accepting certain fundamental, intuitive ideas present in the political culture. One such fundamental idea is that society is a fair system of social cooperation over time, across generations; another is that citizens are free and equal persons capable of cooperating over a full life. Third, accepting the political conception does not presuppose accepting a comprehensive moral doctrine; nor is the political conception a “compromise” tailored to fit the range of comprehensive doctrines present in the society. Nevertheless, supporters of divergent comprehensive doctrines can achieve an “overlapping consensus” on an appropriate political conception.⁵¹

Rawls defends a particular type of political conception of justice: justice as fairness is an example of a *political constructivist* theory. It does not presuppose that there is any prior moral order that a theory of justice purports to correspond to or represent. Rather, principles of justice as the product of a procedure that represents reasonable constraints on how rational agents should reason practically about the terms of social cooperation. The outcome of such a procedure might clearly lead to discontinuity between the target of egalitarian concerns in the sphere of justice and the egalitarian concerns that may be present elsewhere in our (diverse) moral doctrines.

A political conception of justice need not be constructivist, however. We might imagine an alternative political conception that involved an attempt to construct a political conception by “balancing” the political “values” implied by the fundamental intuitive ideas present in the democratic culture. When the appropriate balancing is accomplished, it might be thought we had captured the moral truth appropriate to this domain. Nor should we think that the balance is but a compromise with what is “ideally” egalitarian: the balancing picks out what is just in the political sphere. Still, the target of egalitarian concerns expressed in this balance of political values may not be continuous with the target of egalitarian concerns outside the political sphere. Uniformity fails here too. This means that the points I have been making about the assumption of uniformity are independent of the debate between intuitionists and moral or political constructivists.

⁵¹ We get what might be called “moral epistemology politicized”; Rawls discusses what objectivity means for moral and political constructivism in “Political Constructivism and Public Justification” (unpublished ms., 1988).

My intention here is not to defend Rawls' view that we must seek political conceptions of justice.⁵² Rather, I have tried to make explicit how such a view bears on the uniformity thesis that seems to underlie the question, What is the target of our egalitarian concerns? Since uniformity is not established, we are unsure how to construe the evidence from certain kinds of examples that explore our moral intuitions.

One way to understand either Sen's view or the Arneson-Cohen view is as part of a "comprehensive" moral view. If that is true, then the fact that elements of that view do not fit with Rawls' account will not necessarily count against Rawls' view. Rawls' view is not tested by matching it to some such comprehensive moral view. The test is whether those who hold these other moral doctrines can support the project of using the fundamental ideas Rawls' singles out to construct a theory of fair cooperation, despite their disagreements about other issues. They do not even have to accept the fundamental ideas for exactly the same reasons. I will not venture a guess whether or not there is such an "overlapping consensus" among these theorists. I suspect from the style of argument underlying each line of criticism that there is little sympathy with Rawls' notion of a political conception of justice or, in particular, with his political constructivism. I suspect that proponents of each line would think there is not enough of a basis for objectivity in justification if we politicize it in this way. That is not an issue I can address here.

⁵² I still have reservations about the relationship and boundaries between justifications that are moral and those that are political.